July 21, 2016

U.S. Securities and Exchange Commission
100 F Street, N.E.
Washington, DC 20549-1090
Attn: Brent Fields
Secretary, Securities and Exchange Commission

Re: Release No. 33-10064; 34-77599 (the "***Release***")
File No. S7-06-16

Dear Mr. Fields:

The Investment Program Association ("***IPA***")[1] respectfully submits this letter in response to the request for public comment by the Securities and Exchange Commission ("***SEC***" or "***Commission***") on modernizing certain business and financial disclosure requirements in Regulation S-K. We understand that the Release is intended to improve the disclosure requirements applicable to registrants to facilitate capital formation and reduce compliance costs while protecting investors.

The IPA applauds the SEC for seeking comments on the Release, and makes the following recommendations:

- While registrants and investors would benefit from updated Industry Guides, it would be detrimental to incorporate the Industry Guides into Regulation S-K.

- Auditors should not be required to attest to the reliability of Management's Discussion and Analysis ("***MD&A***"). Increased use of cross-references and hyperlinks would eliminate unnecessary repetition of information disclosed in previous filings or in other sections of the same filing.

- The length of risk factor disclosure could be reduced through a safe harbor or a rule change to enumerate the risks a registrant should not include in its disclosure.

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[1] Formed in 1985, the IPA provides the direct investment industry with effective national leadership and today is the leading advocate for the inclusion of direct investments in a diversified investment portfolio. IPA members include direct investment product sponsors, FINRA member broker-dealer firms and direct investment service providers.

- Emerging growth companies ("***EGC***") should be able to take advantage of scaled disclosure requirements to the same extent as smaller reporting companies ("***SRC***").

I. Industry Guides

A. The Industry Guides should not be codified within Regulation S-K.

The current configuration of the Industry Guides, as guidance of the Division of Corporate Finance ("***Division***") instead of as rules, regulations or statements of the Commission, provides the Commission with flexibility to modify requirements over time to ensure investors have access to updated and relevant information about registrants. In addition, the Industry Guides provide registrants with appropriate guidance and flexibility while drafting registration statements and reduce the Commission staff's time spent on repeatedly issuing the same comments. At the same time, investors benefit from enhanced disclosure from registrants, including increased comparability between registrants.

The original nature of the Industry Guides was to clarify Commission staff practice at a particular point in time. Because the Commission's view of issues and staff comments can change over time, the Industry Guides should remain susceptible to change. The Commission can more easily make necessary changes and issue additional guidance to clarify the guides and to eliminate outdated disclosure in the current configuration of the Industry Guides as compared to if the Industry Guides were incorporated into Regulation S-K. The Commission should retain the flexibility to modify and update the Industry Guides to promote disclosure effectiveness and investor protection without having to undertake a formal notice and comment process. Keeping the Industry Guides separate from Regulation S-K would allow the Division to clarify its policies and practices in a more timely fashion than formal rulemaking. Without the ability to update registrants regarding changes in the Division's policies, registrants may repeat unnecessary or outdated disclosure that does not enhance investor understanding, but adds to already bulky filings.

Incorporating the Industry Guides into Regulation S-K would not promote increased uniformity and comparability between registrants in any significant way. Most Industry Guide 5 ("***Guide 5***") users substantially comply with Guide 5 because of previous Commission staff comments during the registration process. A high degree of comparability exists between Guide 5 users because most follow the guide while drafting their registration statements and during their offerings. Therefore, investors can already easily compare registrants; codifying the Industry Guides into Regulation S-K would not directly help investors that are trying to compare registrants.

The regulatory burden required for the Commission to modify the Industry Guides if they were codified into Regulation S-K far outweighs any benefit investors would receive because investors already benefit from the comparability afforded from the Industry Guides and other Division guidance. The Commission should retain the flexibility to modify the Industry Guides to make disclosure more useful and relevant to investors and not codify the Industry Guides within Regulation S-K.

B. The Industry Guides should be updated to include subsequently published guidance and to eliminate unnecessary or obsolete disclosure.

Although IPA advocates for the Industry Guides to remain outside of Regulation S-K, the Commission should consider updating the Industry Guides. Specifically, Guide 5 could be modified to reduce confusion and to update its disclosure guidance.

The simplest way for the Commission to update Guide 5 would be to incorporate the guidance from the Division's Disclosure Guidance Topics ("***Topics***") that modify Guide 5. This would eliminate the need for a registrant to refer to multiple levels of Division guidance along with the Commission's regulations as it drafts its registration statement and other reports, which would reduce confusion and promote more uniform disclosure among registrants without the need for as much Commission staff intervention.

However, even if the Commission incorporates the guidance of the Topics into Guide 5, certain Guide 5 requirements remain outdated. IPA believes that Guide 5 no longer represents the current views of the Commission staff concerning the guide's subject matter. Accordingly, the Commission should take this opportunity to overhaul the outdated aspects of Guide 5. To that end, IPA believes the following are a few of the areas that the Commission should focus on in such an overhaul:

- Eliminate the need for registrants to file sales literature with the SEC, but instead provide comprehensive guidance in the revised Guide 5. The revised Guide 5 could be modeled after Topic 3 and also incorporate frequent Division comments. This change would foster enhanced disclosure, eliminate a sometimes lengthy process for registrants and provide the Division the flexibility and time to address other guidance matters.

- Simplify the prior performance tables required by Item 8 of Guide 5 to enhance readability and usefulness to investors in evaluating a sponsor's prior performance record.

- Clarify what a "program" is and who is a "sponsor."

- Remove the registrant's obligation to include undertakings that are stale or outdated, such as those identified in Topic 6, and separate the registrant's ability to continue to sell in certain circumstances from the undertakings because continuous sales are critical to Guide 5 users.

- Clarify to which registrants Guide 5 applies.

II. Company Performance, Financial Information and Future Prospects

IPA commends the Commission on its efforts to increase the usefulness of MD&A by emphasizing the materiality of disclosure provided by registrants through a principles-based system. MD&A can be further improved by retaining management's discretion over the disclosure, eliminating the repetition of certain period-to-period comparisons and using hyperlinks and cross-references to fulfill disclosure requirements and eliminate duplicative disclosure.

First, the Commission should not require that the registrant's auditor attest to the reliability of MD&A. Requiring auditor attestation would add significant costs to every registrant's reporting process. Coordinating disclosure between the registrant's management and the auditors is also likely to increase the time spent on the disclosure by both key parties. Ultimately, this diverts management's attention away from running its business, which could negatively impact investors. If required to attest to the reliability of MD&A, the auditing firm is likely to exert more influence over the substance of the disclosure, which would change the nature of the section from *management's* discussion and analysis to the *auditor's* discussion and analysis. This could result in overly sanitized disclosure because the auditing firm is not likely to want to take on increased potential liability related to MD&A. Along with inviting more duplicative disclosure from the notes to the financial statements, this may also undo the advances the Commission has made in promoting more investor-friendly, principles-based disclosure in MD&A.

Second, the Commission should eliminate period-to-period comparisons in MD&A except for the most recent period being analyzed. The current comparisons required in Regulation S-K make the disclosure less investor-friendly while adding to lengthy disclosure in this section. The repeated period-to-period disclosure distracts the reader from the changes relevant to the current period. Eliminating this requirement would make new and material information more readily apparent to investors. If the Commission continues to value the information provided in period-to-period disclosure, it should allow registrants to satisfy this disclosure requirement by using hyperlinks to link back to previous MD&A disclosure, which would give interested investors instant access to this information.

Finally, to eliminate the repetition of critical accounting policies from the notes to the financial statements in MD&A, the Commission should strongly encourage registrants to use cross-references with hyperlinks to simplify their disclosure and make the section more readable. Registrants should be advised to use cross-references with hyperlinks to the notes and expand on that existing disclosure only if the impact of accounting estimates may have a material impact, positive or negative, on the registrant's business.

III. Risk and Risk Management

To reiterate the concerns of some commenters on the Disclosure Effectiveness Initiative, risk-related disclosure will remain lengthy, not substantially improve investor understanding of the registrant and may grow even longer because of registrants' liability concerns. Under the current rules, a registrant must balance its desire to avoid litigation with the requirement to have "concise" risk-related disclosure. Unless the Commission takes action to create a safe harbor or clarify certain disclosures that need not be included in risk-related disclosure, a registrant will have no incentive to limit extensive and generic risk factor disclosure.

A registrant will likely limit its risk factor disclosure only if the Commission creates a safe harbor to limit the registrant's exposure to increased litigation arising from lessened risk-related disclosure. The Commission could also change the rules to include specific items that a registrant should not disclose in its reports, such as (1) generalized risks that impact all registrants or all registrants in a particular industry; (2) market-related risks, like stock price volatility; (3) organizational structure risks; (4) regulation summaries and (5) repetitive risk factors.

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The Commission should not create a default framework for risk factor disclosure that classifies risk factors based upon each risk's likelihood and relative impact. Current risk factor disclosure already requires considerable time and attention of registrants. If a layer of probability assessment is required in addition to the already bulky risk factor disclosure, a registrant will likely spend even more time and money preparing its reports, ultimately to the detriment of its investors. This section will likely become even longer as a registrant attempts to couch its probability estimates to avoid any increased litigation related to this disclosure. The benefit to investors, if any, will be outweighed by increased compliance costs to registrants. Relatedly, re-ordering a registrant's risk factors according to magnitude of risk or order of importance may add time to this already time-consuming area of disclosure and may reduce overall readability of the section. If a registrant periodically re-orders its risk factor disclosure, Commission staff and investors may have more difficulty discerning what risks are new or developing for the registrant.

Reducing the length of risk factor disclosure by creating a safe harbor is more likely to give investors better context in which to evaluate a registrant's business and financial performance than assigning a probability to existing risk factors or re-ordering those risk factors according to their likelihood or potential impact on the registrant.

IV. Scaled Requirements

The existing scaled disclosure requirements for SRCs and EGCs represent an important step toward promoting capital formation by reducing compliance costs for these types of registrants. To provide further disclosure accommodation to smaller registrants, the Commission should allow EGCs to take advantage of the scaled disclosure requirements to the same extent as SRCs.

Although trends point to SRCs and EGCs providing semi-annual reports, the Commission should retain quarterly reporting requirements because it is important for investors and analysts that SRCs and EGCs continue to file quarterly reports. Quarterly reports provide increased transparency for investors as well as useful information about registrant developments and performance to research and due diligence analysts. With more information available to these critical constituencies, investors in non-traded products have more confidence and comfort in their investments. However, the Commission should consider the costs of quarterly reports to registrants. If two quarterly reports were eliminated, a registrant could save between $30,000 and $50,000 a year or more, depending on the circumstances, which may benefit investors because the SRC or EGC registrant could use the capital to invest in its business.

In conclusion, the IPA appreciates the opportunity to comment upon the Release, and we thank the SEC staff for its hard work and dedication in modernizing the business and financial disclosure requirements in Regulation S-K. As always, the IPA stands ready to discuss any of the above at any time in order to work with the SEC towards creating an environment that encourages capital formation and job growth.

Respectfully submitted,

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